

1 Kelly A. Evans (NV Bar No. 7691)
2 Jay J. Schuttert (NV Bar No. 8656)
3 Chad R. Fears (NV Bar No. 6970)
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
4 Telephone: (702) 784-5200
Facsimile: (702) 784-5252

5
6 Attorneys for Defendants
CARRIAGE CEMETERY SERVICES, INC. and
BUNKERS MEMORY GARDENS MEMORIAL PARK
7

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 THE ESTATE OF THEODORE
KENNEDY; WILLIE WADE, AN
11 INDIVIDUAL; CARNELL
WASHINGTON, AN INDIVIDUAL;
12 VIOLA WASHINGTON, AN
INDIVIDUAL; JAMES KENNEDY, AN
INDIVIDUAL; AND THEODORE
KENNEDY, JR., AN INDIVIDUAL,
13 Plaintiffs,

14
15 vs.

16 CARRIAGE CEMETERY SERVICES,
INC., d/b/a BUNKERS MORTUARIES,
CEMETARIES, & CREMATORIES,
MEMORY GARDENS MEMORIAL
PARK, DOES 1 through 5, and ROE
CORPORATIONS 1 through 5,
17 Defendants.
18

19 Case No. 2:08-CV-01102-KJD-RJJ

20
21 **DEFENDANTS' MOTION TO DISMISS**
PURSUANT TO FED. R. CIV. P. 12(B)(1)
FOR LACK OF SUBJECT MATTER
JURISDICTION

22
23 **(Oral Argument Requested)**

24
25 Defendants Carriage Cemetery Services, Inc. and Bunkers Memory Gardens Mortuary¹
(hereinafter collectively "defendants") hereby file this Motion to Dismiss pursuant to Rule
26 12(b)(1) of the Federal Rules of Civil Procedure.

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28 ///

29
30 ¹ Plaintiffs misidentify this entity in their complaint. Its correct name is Bunkers Memory Gardens
31 Mortuary, not Bunkers Memory Gardens Mortuary and Cemetery as stated in plaintiffs' complaint.

1 This Motion is supported by the accompanying Memorandum of Points and Authorities,
2 the attached exhibits, and any oral argument that the Court may allow at the hearing on this
3 matter.

4 DATED this 27th day of August 2008

SNELL & WILMER L.L.P.

5
6 By: Chad R. Fears
7 Kelly A. Evans (NV Bar No. 7691)
8 Jay J. Schuttert (NV Bar No. 8656)
9 Chad R. Fears (NV Bar No. 6970)
10 3883 Howard Hughes Parkway, Suite 1100
11 Las Vegas, NV 89169
12 Telephone: (702) 784-5200
13 Facsimile: (702) 784-5252

14 Attorneys for Defendants
15 CARRIAGE CEMETERY SERVICES, INC.
16 and BUNKERS MEMORY GARDENS
17 MEMORIAL PARK

Snell & Wilmer
L.L.P.
3883 HOWARD HUGHES PARKWAY, SUITE 1100
LAW OFFICES
LAS VEGAS, NEVADA 89169
(702) 784-5200

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Federal courts are courts of limited jurisdiction, and may hear only those cases and claims
4 which the United States Constitution or federal statute authorizes them to adjudicate. *See*
5 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Article III of the United
6 States Constitution requires a federal court to have an actual “case or controversy” before
7 exercising jurisdiction. *See* U.S. Const., Art. III; *see also Golden v. Zwickler*, 394 U.S. 103, 108
8 (1969). Embodied within Article III’s case or controversy requirement is the standing doctrine,
9 the absence of which prevents the power of the federal judiciary to be invoked. *See Schlesinger*
10 *v. Reservists Comm. to Stop the War*, 418 U.S. 208, 215 (1974). A plaintiff has “standing” if he
11 or she suffered an actual injury that is causally connected to the defendant’s conduct and which
12 can be redressed by the courts. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).
13 Standing is a prerequisite to subject matter jurisdiction. *See Stewart v. Thorpe Holding Co. Profit*
14 *Sharing Plan*, 207 F.3d 1143, 1148 (9th Cir. 2000).

15 The instant complaint seeks redress for the alleged mistaken cremation of the decedent,
16 Theodore Kennedy. Plaintiffs are essentially the known surviving relatives. Without
17 distinguishing which plaintiff is bringing which claims, the lawsuit alleges several causes of
18 action relating to the cremation and surrounding circumstances. Nevada has yet to address the
19 rights and causes of action for the mishandling of a corpse. Other jurisdictions have addressed
20 what rights the decedent’s relatives possess and what duties a mortician or funeral director
21 undertakes regarding a decedent’s remains. But these rights and duties are confined. As such,
22 many of the plaintiffs lack standing to bring the claims alleged in the complaint. Rule 12(b)(1) of
23 the Federal Rules of Civil Procedure thus mandates the dismissal of their claims.

24 **BACKGROUND**

25 A. **Factual Background**

26 In 2007, Theodore Kennedy was suffering from terminal liver cancer. Due to his
27 anticipated death, the defendants were contacted and the burial and funeral services were
28

1 prepaid.² On December 7, 2007, Theodore Kennedy passed away.³

2 Desiring that their brother be buried, the decedent's sisters, Carnell Washington and
 3 Willie Wade, executed the required "Embalming Authorization," "Internment/Entombment
 4 Authorization," and "Acknowledgment of Disclosures/Disclaimer" forms.⁴ At the time these
 5 forms were executed, representatives of the defendants allegedly assured the "plaintiffs" that
 6 cremation could not be performed on anyone without the proper authority.⁵ At this time,
 7 "plaintiffs" allegedly reiterated to defendants' staff their opposition to the practice of cremation.⁶
 8 As alleged in the complaint, contrary to the plaintiffs' wishes and defendants' assurances,
 9 decedent's corpse was cremated. Due to the cremation and defendants' allegedly insensitive
 10 handling of the situation, all plaintiffs have and will allegedly continue to suffer "physical injury,
 11 shock, outrage, extreme anxiety, worry, mortification, embarrassment, humiliation, distress, grief,
 12 and sorrow."⁷

13 B. Procedural Background

14 On July 28, 2008, plaintiffs filed the instant complaint. Plaintiffs are: the decedent's
 15 Estate, the decedent's three sisters (Willie Wade, Carnell Washington, and Viola Washington),
 16 the decedent's brother (James Kennedy), and the decedent's son (Theodore Kennedy Jr.).⁸ Each
 17 plaintiff alleges the following causes of action: (1) Breach of Contract; (2) Breach of Covenant
 18 of Good Faith and Fair Dealing; (3) Breach of Fiduciary Duty; (4) Negligent Misrepresentation;
 19 (5) Negligence; (6) Negligent Interference with Remains and Intentional Mishandling of Corpse;
 20 (7) Intentional Infliction of Emotional Distress; (8) Negligent Infliction of Emotional Distress;⁹

21 ² See Check dated October 14, 2007 to Bunker's Eden Vale Mortuary for "Funeral Services
 22 Theodore Kennedy," a copy of which is attached as Exhibit "A."

23 ³ See Burial Permit, a copy of which is attached as Exhibit "B."

24 ⁴ See Executed "Embalming Authorization" form, a copy of which is attached as Exhibit "C;"
 25 Executed "Internment/Entombment Authorization" form, a copy of which is attached as Exhibit "D;"
 26 Executed "Acknowledgment of Disclosures/Disclaimer" form, a copy of which is attached as Exhibit "E."

27 ⁵ See Cmpl. ¶ 14.

28 ⁶ See *id.*

29 ⁷ See *id.* ¶ 39.

30 ⁸ See Cmpl. ¶¶ 1-5; see also December 15, 2007 Obituary for Theodore Kennedy's Memorial
 31 Service, a copy of which is attached as Exhibit "F."

32 ⁹ While the defendants dispute the underlying merits of plaintiffs' claims for Intentional Infliction
 33 and Negligent Infliction of Emotion Distress, at this stage of the litigation, the plaintiffs (except for the
 34 Estate of Theodore Kennedy) arguably have standing to bring them. Accordingly, defendants do not
 35 substantively address them in this motion.

1 and (9) Unjust Enrichment. Because most of the plaintiffs lack standing to bring these causes of
 2 action, the Court must dismiss them for lack of subject matter jurisdiction.

3 **LEGAL STANDARD**

4 **A. Rule 12(b)(1) Standards**

5 Dismissal pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure is appropriate
 6 when the court lacks subject matter jurisdiction over a plaintiff's claim. *See Fed. R. Civ. P.*
 7 12(b)(1). A Rule 12(b)(1) attack on jurisdiction can be either facial, confining the inquiry to
 8 allegations in the complaint, or factual, permitting the court to look beyond the complaint. *See*
 9 *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1040 n.2 (9th Cir. 2003); see also 2 James
 10 Wm. Moore et al., *Moore's Federal Practice* ¶ 12.30[4], at 12-38 to 12-41 (3d ed. 1999). Here,
 11 defendants are bringing a factual attack under Rule 12(b)(1) and thereby dispute the truth of some
 12 allegations and the significance of others in relation to the plaintiffs' standing and the court's
 13 ability to therefore exercise subject matter jurisdiction. *See Wolfe v. Strankman*, 392 F.3d 358,
 14 362 (9th Cir. 2004). In resolving a factual attack, the court need not presume the truthfulness of a
 15 plaintiff's allegation and may review evidence beyond the complaint without converting the
 16 motion to dismiss into a motion for summary judgment. *See Safe Air for Everyone v. Meyer*, 373
 17 F.3d 1035, 1039 (9th Cir. 2004). Because standing pertains to a federal court's subject-matter
 18 jurisdiction under Article III, it is properly raised in a motion to dismiss under Rule 12(b)(1). *See*
 19 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

20 **B. Standing**

21 To have standing, a plaintiff must "allege personal injury fairly traceable to the
 22 defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen*
 23 *v. Wright*, 468 U.S. 737, 751 (1984). This injury must be distinct and palpable and cannot be
 24 abstract, conjectural, or merely hypothetical. *See Warth v. Seldin*, 422 U.S. 490, 501 (1975).
 25 Thus, there must be a causal connection between the conduct of which a plaintiff complains and
 26 an injury that is capable of redress. *See Lujan*, 504 U.S. at 560-61. Finally, the plaintiff must
 27 assert his or her own legal rights and interests and cannot rest his or her claim on the legal rights
 28 or interests of third parties. *See Warth*, 422 U.S. at 499. Because a federal court lacks subject

1 matter jurisdiction over a plaintiff without Article III standing, his claims must be dismissed
 2 under Rule 12(b)(1). *See, e.g., Cetacean Cnty v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004)
 3 (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998)).

4 **ANALYSIS**

5 **A. The Estate of Theodore Kennedy**

6 The Estate of Theodore Kennedy lacks standing to bring any of the claims brought in the
 7 complaint. It is axiomatic that a cause of action does not survive in favor of the estate of the
 8 decedent unless it accrued in favor of the decedent during his lifetime. *See Myers v. Heritage*
 9 *Enter., Inc.*, 773 N.E.2d 767, 769 (Ill. App. Ct. 2002); *Price v. Holmes*, 422 P.2d 976, 981 (Kan.
 10 1967); *Neal v. Neal*, 250 F.2d 885, 890 (10th Cir. 1958). The events upon which the complaint
 11 bases all of its claims occurred after the death of Theodore Kennedy: the cremation, the
 12 defendants' alleged breach of its contractual and common law duties, the alleged actions and
 13 communications of defendant's representatives after discovering the cremation, and the ensuing
 14 injury and emotional distress (assuming that a decedent can incur such distress after mortality).
 15 Thus, the contractual and tort claims brought in the complaint failed to accrue during the
 16 decedent's lifetime. *See, Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440
 17 (1998) (A breach of contract claim accrues when the facts constituting the breach occur); *Price*,
 18 422 P.2d at 981 (same); *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 668, 765 P.2d 184,
 19 185-86 (1988) (negligence causes of action accrue when the facts satisfying the elements of the
 20 claim occur and damages have been sustained). Because these claims do not survive Theodore
 21 Kennedy's death, his Estate lacks standing to now bring them. Accordingly, the Court must
 22 dismiss the Estate for lack of subject matter jurisdiction.

23 **B. Decedent's Sisters Willie Wade and Carnell Washington**

24 Plaintiffs Willie Wade and Carnell Washington are the only plaintiffs arguably with
 25 standing to bring the breach of contract claims as parties to the contract. These two sisters are
 26 also the only two individuals who colorably have standing to bring the negligent representation
 27 and unjust enrichment claims.

28 ///

1 **1. Contractual Claims**

2 The complaint alleges that the “plaintiffs” entered into a written contract with defendants
 3 to obtain and ensure the burial of the decedent’s remains “in an individual, dignified, respectful,
 4 and lawful manner.”¹⁰ The complaint further alleges that by cremating the decedent’s remains the
 5 defendants have mishandled, abused and desecrated the decedent’s body in breach of the express
 6 contract (first cause of action), of the implied contractual covenant of good faith and fair dealing
 7 (second cause of action), and of the defendants’ implied fiduciary duty (third cause of action).¹¹

8 Contrary to the allegations in the complaint, not all of the plaintiffs are parties to the burial
 9 and funeral contract at issue in this case. Only Plaintiffs Willie Wade and Carnell Washington
 10 are parties because they are the ones who executed the forms or agreements upon which claims
 11 for breach of contract or of its implied contractual covenants or duties are based. Willie Wade
 12 executed the “Internment/Entombment Authorization” form.¹² Carnell Washington executed the
 13 “Acknowledgment of Disclosures/Disclaimer,” “Embalming Authorization,” and “Statement of
 14 Funeral Goods and Services Selected” forms as well as signed the check that prepaid for the
 15 burial and funeral services.¹³ As the only plaintiffs to have executed the contract, Willie Wade
 16 and Carnell Washington are the only ones who arguably have standing as contractual parties to
 17 sue for the alleged breach. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Fitts*, 120 Nev. 707, 711
 18 n.14, 99 P.3d 1160, 1162 n.14 (2004) (parties to a contract may sue for the breach thereof).
 19 Accordingly, the court lacks subject matter jurisdiction over the remaining plaintiffs’ breach of
 20 contract claims to the extent they sue as a contractual party.

21 **2. Negligent Representation**

22 Under the negligent representation cause of action, the complaint alleges that due to the
 23 “false, incomplete and misleading” statements of defendants’ representatives, “plaintiffs” entered
 24 into funeral and burial agreements regarding the proper burial of the decedent’s remains. The
 25 complaint further alleges that the “plaintiffs” suffered “damages and injury” due to the mistaken

26 ¹⁰ Cmpl. ¶ 29.
 27 ¹¹ *See id.* ¶¶ 29-31, 38, 43-46.
 28 ¹² *See Ex. D.*
 29 ¹³ *See Ex. A, C, & E; see also Executed “Statement of Funeral Goods and Services Selected,” a copy*

of which is attached as Exhibit “G”.

1 cremation.¹⁴ To prevail on this claim, each plaintiff must establish that defendants, by failing to
 2 exercise reasonable care or competence in communicating information regarding embalming,
 3 burial and cremation services, supplied false information upon which that plaintiff justifiably
 4 relied and by which the plaintiff suffered a pecuniary loss. *See Barmettler v. Reno Air, Inc.*, 114
 5 Nev. 441, 449, 956 P.2d 1382, 1387 (1998). This tort applies only to business transactions. *See*
 6 *id.*

7 Although the complaint states this cause of action as to all plaintiffs, again only Plaintiffs
 8 Willie Wade and Carnell Washington arguably have standing to bring it. As shown previously,
 9 Ms. Wade and Ms. Washington are the only plaintiffs who relied upon the allegedly false
 10 information, entered into burial agreements, and suffered a pecuniary loss. Because the
 11 remaining plaintiffs did not enter into this business transaction, they did not suffer an injury
 12 causally connected to defendants' alleged misrepresentations. Thus, the remaining plaintiffs do
 13 not have standing and their negligent representation claims must be dismissed pursuant to Rule
 14 12(b)(1).

15 **3. Unjust Enrichment**

16 The complaint alleges that defendants are unjustly enriched at "plaintiffs'" expense by
 17 accepting payments for funeral services they failed to provide.¹⁵ To prevail on this quasi-contract
 18 claim, a plaintiff must show that he conferred a benefit on the defendant, the defendant
 19 appreciated the benefit, and the defendant accepted and retained such benefit. *See Topaz Mut.*
 20 *Co., Inc. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992).

21 The only plaintiffs who arguably could have standing to bring this quasi-contract claim
 22 are again Willie Wade and Carnell Washington who executed the funeral and burial contract and
 23 paid for the decedent's funeral services. The amount indicated on the statement of services
 24 matches the amount of the check signed by Carnell Washington. Only these two plaintiffs have
 25 standing to pursue an unjust enrichment claim because they are the ones who arguably conferred
 26 the benefit. The remaining plaintiffs did not enter into a contract nor conferred a pecuniary
 27

28¹⁴ *See Cmpl. ¶¶ 52-57.*

¹⁵ *See Cmpl. ¶ 83.*

1 benefit on defendants, and thus lack standing to bring an unjust enrichment claim. Except for
 2 Willie Wade and Carnell Washington, the court must dismiss this claim pursuant to Rule
 3 12(b)(1).¹⁶

4 **C. Decedent's Son Theodore Kennedy, Jr.**

5 Plaintiff Theodore Kennedy, Jr. is the only plaintiff with standing to bring the negligence
 6 and negligent interference with remains claims. Because of his standing to bring these two
 7 claims, he is arguably the only plaintiff to have standing to bring the breach of contract claims as
 8 a third-party beneficiary.

9 **1. Negligence and Negligent Interference with Remains**

10 Alleging that defendants breach their duty and interfered with the plaintiffs' right to the
 11 body by cremating the decedent's remains, the complaint seek liability for negligence and
 12 negligent interference with remains.¹⁷ These two claims are at the heart of this case as they deal
 13 with the common law rights and duties dealing with the handling and treatment of a decedent's
 14 remains. A review of these two causes of action, and the common law rights and duties at issue,
 15 illustrates who has standing to bring these claims as well as who possibly has standing to bring a
 16 breach of contract claim as a third-party beneficiary.

17 While a property right in a commercial sense does not exist in a dead body, courts have
 18 recognized a quasi-property right in it. *See, e.g., Culpepper v. Pearl Street Building, Inc.*, 877
 19 P.2d 877, 880 (Colo. 1994); *Whitehair v. Highland Memory Gardens, Inc.*, 327 S.E.2d 438, 441
 20 (W.Va. 1985). This quasi-property right includes the right to custody of the body; to receive it in
 21 the condition in which it was left; to have the body treated with decent respect; and to bury or
 22 otherwise dispose of the body without interference. *See Whitehair*, 327 S.E.2d at 441. This right
 23 to possession, custody and control of the decedent's remains is sometimes called the common law

24
 25 ¹⁶ While her sisters arguably have standing to bring the contract, negligent representation and unjust
 26 enrichment claims, Plaintiff Viola Washington does not. Viola's only connection to these claims is that
 27 her name is one of the names on the check that Willie Wade signed in prepaying the burial and funeral
 28 services. Viola did not execute any of the agreements or forms, there is no indication that she relied on
 defendant's representation or that she suffered a pecuniary loss. Viola's connection to these claims is too
 tangential to find that she has standing to bring them. Any injury is abstract and hypothetical at this point.

¹⁷ *See Cmpl. ¶¶ 60-61, 68-69.* Because these two claims address the same issue -- the wrongful
 cremation of the decedent's remains, they will be addressed together.

1 right of sepulcher, the interference of which can lead to tortious liability. *See Galvin v. McGilley*
 2 *Memorial Chapels*, 746 S.W.2d 588, 591 (Mo. Ct. App. 1987)

3 Who can bring a cause of action for interference with the right of sepulcher is limited.
 4 Under the case law, only the surviving spouse, if there is one, or the next of kin of the deceased
 5 has the right to possession of the dead body, and hence standing to bring a claim for tortious
 6 interference with that right. *See, e.g., Whitehair*, 327 S.W.2d at 443-44. The Restatement
 7 (Second) of Torts, likewise, limits a cause of action for interference with the right of sepulcher
 8 "to a member of a family of the deceased who is entitled to the disposition of the body." Restatement
 9 (Second) of Torts § 868. Nevada, like some states, has superseded the common law
 10 and enacted a statute establishing the order of who has the duty of burial and hence right of
 11 sepulcher. *See NRS 451.024.*

12 Under NRS 451.024, Theodore Kennedy, Jr.'s right to order the burial of his father's
 13 remains takes priority over any rights his aunts Willie Wade, Carnell Washington, and Viola
 14 Washington and his Uncle James Kennedy may possess. *See NRS 451.024(1)(a)-(h).* Due to his
 15 priority under NRS 451.024, only Theodore Kennedy, Jr. has the right to order the burial of his
 16 father's remains, thus he alone has standing to bring the negligence and negligent interference
 17 with remains causes of action. *See, e.g., Morton v. Maricopa County*, 177 Ariz. 147, 152, 865
 18 P.2d 808, 813 (Ariz. Ct. App. 1993) (holding that the decedent's parents and not his siblings had
 19 standing to bring a claim for negligent interference with a dead body because A.R.S. § 36-831
 20 gave decedent's parents priority over the siblings with regard to the statutory duty of burial).
 21 Because the remaining plaintiffs did not have the statutory right to order the burial of the
 22 decedent, they could not have suffered an actual injury when the defendants alleged interfered
 23 with this right. Without suffering an actual injury, these plaintiffs do not have standing. *See*
 24 *Allen*, 468 U.S. at 751. Except for Plaintiff Theodore Kennedy, Jr., the court lacks subject matter
 25 jurisdiction over the claims for negligence and negligent interference with remains brought by the
 26 other plaintiffs.

27 ///

28 ///

2. Contract Claims as Third-Party Beneficiary

2 As to the three contractual causes of action, the complaint alleges that all the plaintiffs are
3 the natural and intended beneficiaries of this contract and thus can bring these claims. Contrary
4 to the allegations, Theodore Kennedy, Jr. is the only plaintiff who colorably has standing to bring
5 the contractual claims as a third-party beneficiary. *See, e.g., Bemis*, 114 Nev. at 1026, 967 P.2d at
6 441 (1998). The contract that was allegedly breached was to assist Theodore Kennedy, Jr.'s in
7 fulfilling his common law and statutory duty and right to possession, custody and burial of his
8 father's remains. Only he possessed the duty to order the burial of his father under NRS 451.024.
9 If plaintiffs allege that there was a third-party beneficiary to the contract, Theodore Kennedy, Jr.,
10 arguably is the only individual to bring a contractual claim in that role. Accordingly, none of the
11 other plaintiffs (with the possible exception of Willie Wade and Carnell Washington) can bring
12 the breach of contract causes of action.

D. Decedent's Brother James Kennedy and Sister Viola Washington

With the possible exception of the intentional infliction and negligent infliction of emotional distress claims, James Kennedy and Viola Washington lack standing to bring any of the claims in the complaint. As explained previously, they cannot bring the breach of contract claims as well as the negligent representation, unjust enrichment, negligence or negligent interference with remains causes of action. Although defendants dispute their underlying merits, the two emotional distress claims are the only ones that James Kennedy and Viola Washington colorably have standing to bring. As such, their remaining claims must be dismissed for lack of subject matter jurisdiction.

CONCLUSION

The instant complaint is an attempt to shoehorn as many relatives and claims into one lawsuit due to the alleged mistaken cremation of Theodore Kennedy's remains. While the Court can exercise subject matter jurisdiction over each claim as to one plaintiff, most plaintiffs lack standing as to any given cause of action. Arguably, only Theodore Kennedy, Jr., has standing to bring the negligence and negligent interference with remains causes of action as well as the breach of contract claims as a third-party beneficiary; only Willie Wade and Carnell Washington

1 have standing to bring the three contractual claims as a contractual party as well as the negligent
2 representation and unjust enrichment claims. Finally, the Estate lacks standing to bring any of the
3 listed causes of action in the complaint because these claims failed to accrue during the
4 decedent's lifetime. For the claims that a plaintiff lacks standing to bring, the Court must dismiss
5 for lack of subject matter jurisdiction.

6 DATED this 27th day of August 2008

SNELL & WILMER L.L.P.

7
8 By: Chad R. Fears

9 Kelly A. Evans (NV Bar No. 7691)

10 Jay J. Schuttet (NV Bar No. 8656)

11 Chad R. Fears (NV Bar No. 6970)

12 3883 Howard Hughes Parkway, Suite 1100

13 Las Vegas, NV 89169

14 Telephone: (702) 784-5200

15 Facsimile: (702) 784-5252

16 Attorneys for Defendants
17 CARRIAGE CEMETERY SERVICES, INC.
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L.L.P.
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3883 HOWARD HUGHES PARKWAY, SUITE 1100
LAS VEGAS, NEVADA 89169
(702) 784-5200

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CERTIFICATE OF SERVICE

Service of the foregoing **MOTION TO DISMISS PURSUANT TO FED. R. CIV. P.**

12(B)(1) FOR LACK OF SUBJECT MATTER JURISDICTION was made via the United States District Court E-Filing System and by U.S. Mail on the 27th day of August 2008, to

Natricia C. Tricano, Esq.
THE TRICANO LAW OFFICE
601 South 7th Street
Las Vegas, NV 89101

Via U.S. Mail
 Via Overnight Mail
 Via Hand Delivery
 Via Facsimile
 Via E-Mail
 Via ECF – Federal Court

Attorneys for Plaintiffs

Chad R. Fears

Snell & Wilmer

LAW OFFICES
HOWARD HUGHES PARKWAY, SUITE 1100
3883 HOWARD HUGHES PARKWAY, NEVADA 89169
(702) 784-5700

9060111

EXHIBIT A

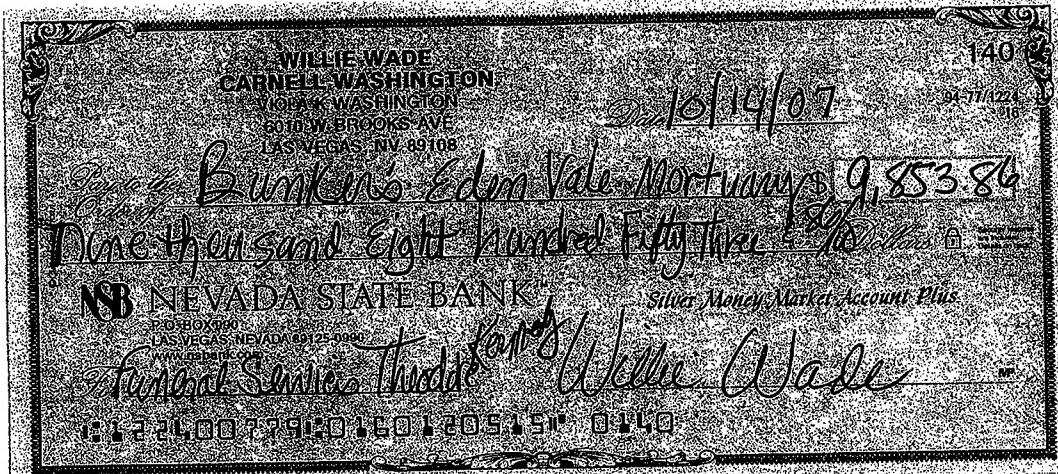


EXHIBIT B

EXHIBIT B

COPY

**STATE OF NEVADA - DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH - SECTION OF VITAL STATISTICS**

00000000028421

BURIAL TRANSIT PERMIT

STATE FILE NUMBER

TYPE OR
PRINT IN
PERMANENT
BLACK INK

DECEDENT

IF DEATH
OCCURRED IN
INSTITUTION
SEE HANDBOOK
REGARDING
COMPLETION OF
RESIDENCE
ITEMS

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF
DEATH

CONDITIONS IF
ANY WHICH
GAVE RISE TO
IMMEDIATE
CAUSE
STATING THE
UNDERLYING
CAUSE LAST

| | | | | | | | | |
|---|--|---|--|--|--|---|---|--|
| 1a. DECEASED-NAME FIRST Theodore | | 1b. MIDDLE KENNEDY SR | 1c. LAST Nathan Adelson HospiceNW | 2. DATE OF DEATH (Mo/Day/Year) December 07, 2007 | 3a. COUNTY OF DEATH Clark | | | |
| 3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas | | 3c. HOSPITAL OR OTHER INSTITUTION-Name(if not either, give street and number) Nathan Adelson HospiceNW | | 3e. If Hosp. or Inst. indicate DOA,OP/Emer. Rm. Inpatient | 4. SEX Male | | | |
| 5. RACE-(e.g., White, Black, American Indian) (Specify) Black | | 6. Was Decedent of Hispanic Origin? If yes, specify Mexican, Cuban, Puerto Rican, etc. No Non-hispanic | 7a. AGE-Last birthday (Years) 59 | 7b. UNDER 1 YEAR MOS 59 | 7c. UNDER 1 DAY HOURS 0 | 7d. UNDER 1 DAY MINS 0 | 8. DATE OF BIRTH (Mo/Day/Yr) September 28, 1948 | |
| 9a. STATE OF BIRTH (If not U.S.A., name country) Mississippi | | 9b. CITIZEN OF WHAT COUNTRY United States | 10. EDUCATION 12 | 11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify) Divorced | 12. SURVIVING SPOUSE (If wife, give maiden name) Matilda YOUNG | | | |
| 13. SOCIAL SECURITY NUMBER 438-72-9910 | | 14a. US WKS OCCUPATION (Give Kind of Work Done During Most of Working Life, even if retired) Time Keeper | | 14b. KIND OF BUSINESS OR INDUSTRY Test Site | | | | |
| 15a. RESIDENCE - STATE Nevada | | 15b. COUNTY Clark | 15c. CITY, TOWN OR LOCATION North Las Vegas | 15d. STREET AND NUMBER 1301 Helen Avenue | | 15e. INSIDE CITY LIMITS (Specify Yes or No) Yes | | |
| 16. FATHER - NAME (First Middle Last Suffix) Thornton KENNEDY | | 17. MOTHER - NAME (First Middle Last Suffix) Matilda YOUNG | | | | | | |
| 18a. INFORMANT- NAME (Type or Print) Carmell WASHINGTON | | 18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip) 4101 Birchmont St Las Vegas, Nevada 89130 | | | | | | |
| 19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Cremation | | 19b. CEMETERY OR CREMATORIAL NAME Palm Crematory | | 19c. LOCATION City or Town State Las Vegas Nevada 89101 | | | | |
| 20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) DAVID JULIUS SIGNATURE AUTHENTICATED | | 20b. FUNERAL DIRECTOR LICENSE 777 | 20c. NAME AND ADDRESS OF FACILITY Bunker's Mortuary 925 N Las Vegas Blvd Las Vegas NV 89101 | | | | | |
| TRADE CALL - NAME AND ADDRESS Susan Banru, Director | | | | | | | | |
| To Be Completed by CERTIFYING PHYSICIAN STEWART STEIN M.D. | | 21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) SIGNATURE AUTHENTICATED | | 21b. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) DAVID JULIUS | | | | |
| 21b. DATE SIGNED (Mo/Day/Yr) December 12, 2007 | | 21c. HOUR OF DEATH 06:15 | | 22b. DATE SIGNED (Mo/Day/Yr) DEC 12 2007 | | 22c. HOUR OF DEATH | | |
| 21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print) Stewart Stein M.D. | | 22d. PRONOUNCED DEAD (Mo/Day/Yr) | | 22e. PRONOUNCED DEAD AT (Hour) | | | | |
| 23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Stewart Stein M.D. 3391 North Buffalo Las Vegas, NV 89129 | | 23b. LICENSE NUMBER 10312 | | | | | | |
| 24a. REGISTRAR (Signature) Susan Banru, Director | | 24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) DEC 12 2007 | | 24c. DEATH DUE TO COMMUNICABLE DISEASE YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> | | | | |
| 25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c)) Liver Cancer | | 26. DUE TO, OR AS A CONSEQUENCE OF: Hepatitis C | | 27. INTERVAL BETWEEN ONSET AND DEATH Two Months | | | | |
| { (a) PART I DUE TO, OR AS A CONSEQUENCE OF: Hepatitis C | | 28. DUE TO, OR AS A CONSEQUENCE OF: (b) | | 29. INTERVAL BETWEEN ONSET AND DEATH Interval between onset and death | | | | |
| { (c) PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part I. | | 30. DUE TO, OR AS A CONSEQUENCE OF: (c) | | 31. INTERVAL BETWEEN ONSET AND DEATH Interval between onset and death | | | | |
| | | | | 26. AUTOPSY (Specify Yes or No) No | 27. WAS CASE REFERRED TO CORONER (Specify Yes or No) Yes | | | |

AUTHORITY FOR BURIAL, TRANSPORTATION, REMOVAL, CREMATION OR OTHER DISPOSITION

Having complied with all rules and regulations governing the preparation of dead human bodies and upon receiving the signatures of the person who is to certify the cause of death, the funeral director or person acting as funeral director, and the local registrar, permission is granted to dispose of this body. The burial-transit permit must be signed below by the cemetery or crematory authority. Where there is no full time person in charge of the cemetery the funeral director may sign as sexton. Upon completion the permit must be returned to the local registrar where death occurred or to the funeral director.

Palm Crematory

(Name of Cemetery or Crematory)

Signature of person in charge
of the cemetery or crematory _____ Date _____

VRS-Rev-Er

BURIAL PERMIT

Print Date: 12/12/2007 12:07:44

EXHIBIT C

EMBALMING AUTHORIZATION

ORAL AUTHORIZATION

If authorization is oral, complete the following:

Authorization Received from: _____ Relationship to Deceased: _____

Date and Time Received: _____ Received by: _____

WRITTEN AUTHORIZATION

I hereby APPROVE DISAPPROVE of the embalming of the remains of:

Theodore Kennedy

Name of Deceased

The undersigned hereby authorizes and requests Bunkers Mortuary including its agents and
Name of Funeral Home

employees to embalm, care for and prepare for disposition of the body of the deceased named above, in accordance with
its customary practices. The undersigned represents that he/she has all the legal authority to take action and agrees to
indemnify and hold harmless the above-mentioned funeral home, its affiliates and their agents and employees from any
and all liability or claim therefor which may arise as a result of this authorization or any action taken in accordance herewith.

I further understand that embalming is not required by law.

Pauline W. Chapman Sister
Signature and Relationship to Deceased

12/15/2007
Date

Signature and Relationship to Deceased

Date

- Completely shaved face

EXHIBIT D

EXHIBIT D

08/25/2017 01:05 FAX

→ Mortuary

001/001

INTERMENT/ENTOMBMENT AUTHORIZATION FORM

Date 12-11-07Contract No. 820655

Interment No. _____

No interment/entombment shall be performed without the written authorization by the recorded owner of the space/crypt. This authorization must be executed on the forms provided by the cemetery and in the presence of a duly authorized cemetery representative.

The undersigned authorizes the interment/entombment of the remains of the deceased in the spaces/crypt described below.

Cemetery Name MEMORY GARDENS
 Decedent Name Theodore Kennedy Age 59 Sex M
 Decedent Address LAS VEGAS, NV.
 Date of Birth 9-28-1948 Date of Death 12-7-2007 Veteran? NC
 * In the following describe Interment space North Angels Lot #115 spot 2 Date of Purchase 2007
 Type of Cemetery Service GRAVE SITE Day SAT Date 12-15-07 Time of Service 12:30
 Type of Outer Burial Container CONCRETE VUL Supplier _____ Memorial _____
 Funeral Home Bunkers Director SHANNON Tel. _____
 Place of Service CHURCH Day SAT Date 12-15-07 Time of Service 11:00
 Remarks FULL SET-UP

The undersigned hereby certify that they are all of the legal custodians of the herein named deceased, having the full legal authority to direct the interment, entombment, or other final disposition of the remains of the deceased, and hereby authorize the above name Cemetery to make disposition of the remains of the deceased as indicated above. The undersigned hereby further certify and represent that they are the owner(s) or authorized representative(s) of the owner(s) of the above described Interment Rights and hereby authorize use of said Interment Rights for the interment, entombment, or other final disposition of the remains of the herein named deceased. Cemetery is hereby authorized to install any outer burial container purchased in connection with this interment in the Interment Rights described herein. The undersigned, jointly and severally, agree to indemnify and hold harmless the Cemetery, its affiliates, and their respective agents, shareholders, officers, directors, and employees from any and all liability, including reasonable attorney's fees, and against any loss, damage, suit, or claim which any of them may sustain in connection with the interment, entombment, or other final disposition authorized hereunder. The undersigned acknowledge that Cemetery will follow the directions of the undersigned in reliance upon the undersigned's representation of authority, without independent inquiry of such authority, and that therefore the foregoing indemnity covers claims by third parties as to superior right or authority for final disposition, including claims of Cemetery's own negligence. If prior to final disposition Cemetery becomes aware of a dispute as to such authority, Cemetery is authorized to suspend arrangements pending resolution of such dispute, and the undersigned authorize Cemetery to apply to a court of competent jurisdiction, at the undersigned's cost, for an order directing final disposition. Further the undersigned agree that Cemetery shall have the right to correct any error in this interment, at its own expense, without any liability for such error.

Signature X Willie Wade Relationship to Deceased Sister
 Interment Right Owner _____
 Print Name Willie Wade Title _____ MI _____ Last Name _____
 Address 6010 W. BROOKS AVG. LAS VEGAS, NV. 89108 City _____ State _____ Zip _____
 Street _____
 Signature _____
 Interment Right Owner _____ Relationship to Deceased _____ Tel. No. _____
 Print Name _____ Title _____ First Name _____ MI _____ Last Name _____
 Address _____
 Street _____ City _____ State _____ Zip _____

| | | |
|------------------------------|-----------------------|-----------------|
| Family Service Counselor | Family Verification | Date |
| <u>BB</u> | <u>X WIL</u> | <u>12-11-07</u> |
| Superintendents Verification | Blind Check By | |
| | | |
| Recorded By | Interment Record Book | |
| Lot Book | Lot Card | Map |

EXHIBIT E

EXHIBIT E



925 LAS VEGAS BOULEVARD NO.
LAS VEGAS, NV 89101
OFFICE (702) 385-1441 • FAX (702) 388-7307

ACKNOWLEDGMENT OF DISCLOSURES/DISCLAIMER

Name of the Deceased:

Theodore Kennedy

Date of Death:

12/7/07

Date of Funeral and/or Final Disposition of Body:

12/15/2007

The Federal Trade Commission Trade Regulation Rule for " Funeral Industry Practices" requires certain disclosures and prohibits misrepresentations. This Acknowledgment of Disclosures/Disclaimer from is a check list we ask those we serve to read and sign during the arrangements for the funeral of (the "Deceased") our funeral firm did or did not do the following:

*I/We who made the arrangements for the funeral and final disposition of the remains of the Deceased,
do hereby attest to the following*

1. I/We were given a General Price List effective on 10/1/07 prior to discussing prices, services or merchandise.
2. I/We were shown (or given where required by state law) a Casket Price List effective on 10/1/07 prior to discussing prices or caskets.
3. I/We were shown (or given where required by state law) an Outer Burial Container Price List effective on 10/1/07 prior to discussing prices or outer burial containers.
4. I/We were not told that embalming is required by state law (except for certain special cases) and were told that the law does not require embalming except in certain special cases, if embalming was provided, it was done with my/our approval.
5. I/We were not told that any law requires embalming for direct cremations, immediate burial, a funeral using a sealed casket, or if refrigeration is available, the funeral is without viewing or visitation and with closed casket.
6. I/We were not told that any law requires a casket for direct cremation or that a casket (other than an unfinished wood box) is required for direct cremation.
7. I/We were told that state law does not require the purchase of an outer burial container or any of the funeral goods or services. I/We selected except as set forth on the Statement of Funeral Goods and Services Selected.
8. No claims were made to me/us as to the merchandise or other offerings of this funeral firm (embalming, caskets; outer burial container) to the effect that embalming or the use of any merchandise available from this funeral firm would delay the decomposition of the remains for long term or indefinite time, or that any such merchandise would protect the body from gravesite substance if such was not the case. No representations or warranties were made to us about the protective features of caskets or outer burial containers other than those made by the manufacturer. The only warranties, expressed or implied, granted in connection with goods sold with the funeral service we arranged were the expressed written warranties, if any, extended by the manufacturers of such goods. No other warranties were extended to us.
9. I/We were not told that the amount of each of the cash advance items was the cost to funeral firm except where such was the case. I/We were told that the funeral firm's cost may be different based on volume or cash discounts or other professional/trade customs where permitted by state or local law.

Signed this 10 day of December, 2007.

WITNESSED:

Signature of Funeral Home Representative

Signature of Funeral Buyer

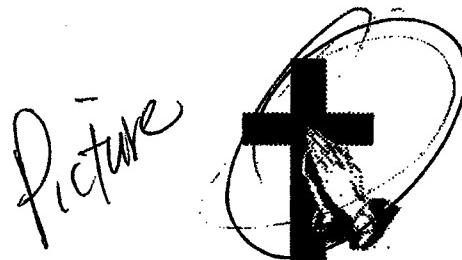
Relationship to Deceased

EXHIBIT F

In Loving Memory

of

Theodore "Ray" Kennedy



Sunrise
September 28, 1948

Sunset
December 7, 2007

Services

Saturday, December 15, 2007
11:00 a.m.

Pilgrim Rest Missionary Baptist Church
1240 West Adams Street
Las Vegas, Nevada 89106

Rev. McKinley Hardmon, Pastor
Officiating

Interment
Bunkers Memory Gardens Cemetery

Willie M. Wade
658-9243 (H)
274-2451 (C)

OBITUARY

Theodore "Ray" Kennedy was born on September 28, 1948, in Natchez, Mississippi, to the late Thornton Kennedy and Matilda Young Kennedy. He attended elementary and junior high school at Concordia Parish Training School in Vidalia, Louisiana. He relocated to Las Vegas, Nevada, with his parents in 1965 where he attended and graduated from Rancho High School in 1968.

After graduating from high school, Ray worked for a number of years at the Nevada Test Site for Reynolds Electrical & Engineering Company as a construction clerk. He also worked in the hotel industry before working as a maintenance/handy man and lawn caretaker, which is what he loved doing. He loved the outdoors and working on his lawn equipment.

Ray was well known in every neighborhood he lived in. His personality drew people to him and everybody loved him.

He leaves to mourn and cherish his memory his son, Theodore (Ted) Kennedy, Jr., and grandson, Jaccarri Kennedy, both of Natchez, Mississippi; one brother, James Kennedy (Bobbie) of Vidalia, Louisiana; three sisters, Carnell Washington, Viola Washington (Frank) and Willie M. Wade (James) all of Las Vegas, Nevada; and a host of nieces, nephews, cousins and friends. His father, mother, brother (Roosevelt), and ex-wife (Glenda), preceded him in death.

“To every thing there is a season,
and a time to every purpose under the heaven:
 a time to be born,
 and a time to die;
 a time to plant;
and a time to pluck up that which is planted;”

Ecclesiastes 3:1-2

EXHIBIT G

